IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 940 OF 2006
WITH
CIVIL APPLICATION NO. 544 OF 2006

Shri Datta Jyotiba Hirgude ..Appellant

Vs.

Shri Miraso Sattu Godhad and ors. ..Respondents

Smt. S.J. Patwardhan and Mr.D.N. Salvi for appellant.
Mr. R.M. Momin for respondent no.1.

**CORAM: B.H. MARLAPALLE, J.**

**Date : April 30, 2007.**

**P.C.:**

1. Heard the learned counsel for both the parties. The present appeal is filed by the original defendant no.1 in RCS No. 123 of 1990 which came to be decreed by the learned Civil Judge, J.D. at Miraj on 30/12/1997. The Regular Civil Appeal No. 93 of 1998 challenging the said decree came to be dismissed by the learned III Adhoc Additional District Judge, Sangli vide his judgment and order dated 8/8/2005.

2. The suit land admeasures 38 R and located in

Revision Survey No. 225/3B/1A within the limits of Miraj Town and it was contended by the plaintiff that the defendant no.1 had erected electric poles in the said land and obtained electric supply from the defendant no.2 - Board and consequently encroached upon the plaintiff's land. The suit was, therefore, filed for mandatory injunction and for removal of the electric poles.

3. The defendant no.1 filed his Written Statement at Exh.14 and denied the contents of the plaint. As per him he was the owner of the land in Gat No.225/3B and between the land of the plaintiff and the defendants land there was another land in Survey No. 225/3A and, therefore, the allegations of the plaintiff that electric poles were erected on the suit land were false and fabricated. The trial court had appointed a court commissioner (PW 2) Mane and after his report was received at Exh.55, the defendant no.1 filed additional Written Statement and contended that land in Survey No.225/3A was totally different from the land in Survey No. 225/3B/1A.

4. In support of the plaintiff's case his son, power of attorney holder Sameer Godhad (PW 1) was examined at Exh.41 and PW 2 Shivaji Mane, the court commissioner was examined. Defendant no.1 examined himself at Exh.58. The map submitted by the court commissioner was at Exh.54.

5. Admittedly, the court commissioner had given notices to both the parties after he was appointed by the trial court. The map at Exh.54 clearly indicated that the suit land was initially numbered as Survey No. 225/3A and by way of revision it came be numbered as Survey No. 225/3B/1A within the Municipal limits of Miraj. The defendant no.1 claimed that he had filed RCS No. 65 of 1989 against the plaintiff and other owners of the adjacent land and as a counter blast, the plaintiff moved RCS No. 123 of 1990. Both the courts below have held, on assessment of the evidence of the respective parties, that the land in Survey No.225/3A is the same land of the plaintiff which got Revision Survey No. 225/3B/1A and the fact that the electric poles (cemented) were erected in the land in old Survey No.225/3A were not denied. The

report of the court commissioner at Exh.55 and the map at Exh.54 clearly proved the case of the plaintiff. The fact finding exercise done by both the courts below regarding the encroachment on the plaintiff's by the defendants by erecting electric poles does not involve any substantial question of law that requires consideration in this second appeal.

6. Hence the appeal is dismissed.

7. Civil Application No. 544 of 2006 does not survive and the same shall stand disposed as such.

**(B.H. Marlapalle,J.)**